

ORDINANCE NO. 2278

AN ORDINANCE to amend The Code of the City of Alexandria, Virginia, 1963, as amended, by adding thereto a new chapter numbered 7B entitled CABLE TELEVISION REGULATION; which new Chapter 7B relates to REGULATION AND CONTROL OF CABLE TELEVISION, THE GRANTING OF FRANCHISES, ESTABLISHMENT OF RATES AND PROVIDES FOR PENALTIES.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That The Code of the City of Alexandria, Virginia, 1963, as amended, be and the same hereby is amended by adding thereto a new chapter numbered 7B to read as follows:

CHAPTER 7B.

CABLE TELEVISION REGULATION.

Article I. General Provisions.

Sec. 7B-1. Short title.

This chapter shall be known and may be cited as the "Cable Television Regulation Code" of the City of Alexandria, Virginia.

Sec. 7B-2. Purpose.

The purpose of this chapter is to provide for the regulation and control of any cable television system operating in the streets and roads of the City of Alexandria.

Article II. General Franchise Provisions.

Sec. 7B-3. Grant of franchise.

Operation of a cable television system in the City of Alexandria shall be permitted only if the city council grants a franchise subject to the provisions and amendments of this chapter.

Sec. 7B-4. Length of franchise.

No franchise shall initially be granted for a period of more than fifteen (15) years except that a franchise may apply for renewal or extension pursuant to Sec. 7B-25 of this chapter.

Sec. 7B-5. Authority not exclusive.

The right to use and occupy said streets and roads for the purpose herein set forth shall not be exclusive, and the City of Alexandria reserves the right to grant a similar use of said streets and roads to any persons, company, corporation or any other entity, at any time during the period of any franchise granted pursuant to this chapter.

Article III. Definitions.

Sec. 7B-6. City.

"City" shall mean the City of Alexandria, Virginia, a municipal corporation of the State of Virginia, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form.

Sec. 7B-7. City council or council.

"City council" or "council" shall mean the governing body of the City of Alexandria, Virginia.

Sec. 7B-8. FCC.

"FCC" shall mean the Federal Communications Commission or its successor.

Sec. 7B-9. Franchise.

"Franchise" shall mean and include an authorization granted pursuant to this chapter in terms of a franchise, privilege, permit, license or otherwise to construct, operate and maintain a cable television system within all or a specified area in the city. Any such authorization, in whatever form granted, shall not mean and include any license or permit required for the privilege of transacting and carrying on a business within the city as required by other ordinances and laws of this city.

Sec. 7B-10. Franchisee.

"Franchisee" shall mean the person, firm or corporation granted a franchise by the city council under the provisions of this chapter, and the lawful successor, transferee or assignee of said person, firm or corporation.

Sec. 7B-11. Street.

"Street" shall mean the surface, the air space above the surface and the area below the surface of any public street, other public right-of-way or public place, including public utility easements.

Sec. 7B-12. Property of franchisee.

"Property of franchisee" shall mean all property owned, installed or used within the city by a franchisee in the conduct of a cable television system business under the authority of a franchise granted pursuant to this chapter.

Sec. 7B-13. Subscriber or user.

"Subscriber" or "user" shall mean any person or entity receiving for any purpose any service of the franchisee cable television system including, but not limited to, the conventional cable television system service of retransmission of television broadcast, radio signals, franchisee's original cablecasting, and the local government, education and public access channels and other services, including but not limited to leasing of channels, data and facsimile transmission, pay television, and police, fire and similar public service communication.

Sec. 7B-14. Cable television system or systems.

Any facility which is operated to perform for hire, either in whole or in part, the service of receiving, amplifying, modifying or originating television, radio or other electrical signals for the purpose of transmitting or distributing such signals by wire, cable or other means to subscribing members of the public, except that such definition shall not include (1) any system which serves fewer than twenty (20)

subscribers or (2) any system which serves only the residents of one or more contiguous apartment dwellings under common ownership, control or management, and commercial establishments located on the premises of such dwellings.

Sec. 7B-15. Signals.

All references to signals, distant, local, radio, television or kinds of channels such as Class I, II, III and IV shall be defined pursuant to the definitions in applicable FCC Rules and Regulations.

Sec. 7B-16. Control.

For the purposes of this chapter, "control" shall be construed to include actual as well as legal control, whether maintained or exercised through or by reason of the method of or circumstances surrounding organization or operation through or by common directors, officers, or stockholders, a voting trust or trusts, a holding or investment company or companies or through or by any other direct or indirect means; and to include the power to exercise control.

Article IV. Transfer or Assignment of a Franchise.

Sec. 7B-17. Transfer prohibited during construction.

No transfer or assignment of a franchise shall be approved or permitted within two years of the effective date of a franchise except by a recorded affirmative vote of three-fourths (3/4) of the members of the city council.

Sec. 7B-18. Transfer or assignment without council consent.

Any franchise granted pursuant to this chapter shall not be assigned or transferred, either in whole or in part, or leased, sublet, or mortgaged in any manner, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person, either by the act of the company or by operation of law, without the consent of the council, which consent shall not unreasonably be withheld. The granting, giving or waiving of any one or more of such consents shall not render unnecessary any subsequent consent or consents.

The consent or approval of the council to any assignment, lease, transfer, sublease or mortgage of the certificate granted to the company shall not constitute a waiver or release of the rights of the city in and to the streets.

Sec. 7B-19. Notice of transfer or assignment.

The franchisee shall promptly notify the city manager and council of any actual or proposed change in, or transfer of, or acquisition by any other party of, control of the franchisee. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, the council may inquire into the qualifications of the prospective controlling party, and the franchisee shall assist the council in any such inquiry. In the event that the council adopts a resolution denying its consent and such change, transfer or acquisition of control has been effected, the council may cancel the franchise unless control of the franchisee is restored to its status prior to the change, or to a status acceptable to the council. Any mortgage, pledge or lease shall be subject and subordinate to the rights of the city under this chapter or other applicable law.

Sec. 7B-20. Transfer or assignment; right of city to exercise first refusal.

Any arrangements which shall give to any person or entity the right to exercise either *de jure* or *de facto* control over the rights granted pursuant to this chapter shall first be extended to the city, who shall have the right of first refusal. Any payment for the transfer or assignment of rights to the city shall be governed by the standards of section 7B-27.

Article V. Termination and Renewal.

Sec. 7B-21. Revocation.

The city council reserves the right to revoke the franchise, and all rights and privileges pertaining thereto, in the event that:

(a) The franchisee becomes insolvent, unable or unwilling to pay its debts or is adjudged a bankrupt; or,

(b) The franchisee violates any of the material provisions of this chapter, or is found to have practiced any fraud or deceit upon the city or the public; provided, however, that complaints by the public shall be considered pursuant to the provisions of section 7B-58 with the right of appeal to the city council. Prior to any revocation proceedings under this section, the franchisee shall be given sixty (60) days' notice in writing, which notice shall state with particularity the grounds upon which the city relies. If the franchisee disputes the facts and conclusions upon which revocation is based, the dispute shall be submitted to arbitration pursuant to article XVII of this chapter.

Sec. 7B-22. Foreclosure.

Upon notice of the prospective foreclosure or other judicial sale of all or a substantial part of the system, or upon the termination of any lease covering all or a substantial part of the system, the franchisee shall notify the city manager and city council of such fact, and such notification shall be treated as a notification that a change in control of the franchisee has taken place, and the provisions of article IV of this chapter entitled "Transfer or Assignment of the Franchise" shall apply.

Sec. 7B-23. Receivership.

The franchise shall be voidable by the city one hundred twenty (120) days after the appointment of a receiver, or trustee. If the city voids the franchise the city may take over and conduct the business of the franchisee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred and twenty (120) days, or unless:

(a) within one hundred twenty (120) days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of this franchise and remedied all defaults thereunder; and,

(b) such receiver or trustee, within said one hundred twenty (120) days, shall have executed an agreement, duly approved by the court having jurisdiction in the matter, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this chapter and any franchise granted pursuant to this chapter.

Sec. 7B-24. Expiration.

Twelve (12) months preceding the expiration of the initial term of a franchise granted pursuant to this chapter, the city shall have the right, at its election, to:

- (a) renew or extend the franchise as provided in section 7B-25,
- (b) invite new applicants, or
- (c) purchase the system.

The franchisee shall make it a condition of each contract entered into by it that the city shall have the right to exercise these options.

Sec. 7B-25. Renewal or extension.

A franchise may be renewed or extended by the city at its discretion for a period of no more than ten (10) years, upon application of the franchisee in accordance with the then existing rules of the FCC and applicable law, including section 15.1-314, Code of Virginia (1950), as amended. Renewal consideration shall include but not be limited to the reports prepared throughout the life of the franchise reviewing the system's technical performance, the development of cable services, the cost of all services to the subscriber and the performance of similar systems in other communities operating under similar requirements. The city retains the right to modify the terms of the franchise as a condition of any such renewal or extension.

Sec. 7B-26. New applicants at expiration.

The city may invite new applicants for the operation of the system in the city. Any new applications shall be filed within sixty (60) days after the date of franchisee's application for renewal or extension.

Sec. 7B-27. City purchase of system upon revocation or expiration.

In the event that the city revokes a franchise, pursuant to appropriate provisions of this chapter, or upon the expiration of a franchise, the city shall have the right to purchase the cable system at a price not to exceed its then fair market value. The fair market value shall be determined by the city in accordance with generally accepted appraisal and accounting principles. Should a dispute arise over the determination of the value as fixed herein of the system, the dispute shall be resolved by arbitration as provided in article XIV of this chapter.

Sec. 7B-28. Continuity of service mandatory.

A franchisee shall be required to provide continuous service to all subscribers in return for payment of the established fee. If a franchisee overbuilds, rebuilds, modifies, sells the system or the city revokes, fails to renew a franchise, elects to purchase the system or the franchise becomes void, a franchisee is required as part of its franchise to continue to operate the system until an orderly and lawful change of operation is effectuated. Under no circumstances shall this period of operation exceed six (6) months from the date of occurrence of any of the above events. In the event a franchisee fails to operate the system for five (5) consecutive days without prior approval of the city manager or the franchisee fails to continue operation on the occurrence of any of the events given in this section, the city or its agent shall have

the right to operate the system until such time that a new operator is selected. If the city is required to fulfill this obligation for the franchisee, the franchisee shall reimburse the city for any costs or damages that result from the franchisee's failure to operate the system as required.

Sec. 7B-29. Eminent domain.

Nothing herein shall be deemed or construed to impair or affect, in any way or to any extent, the right of the city to acquire the property of the franchisee through the exercise of the right of eminent domain, and nothing herein contained shall be construed to contract away or to modify or abridge, either for a term or in perpetuity, the city's right of eminent domain with respect to any public utility.

Article VI. Franchise Territory, Construction Timetable,
Extension of Service.

Sec. 7B-30. Franchise territory.

The city council may grant a franchise which extends to the present territorial limits of the city or to any lesser area therein and to any area henceforth added thereto during the term of a franchise.

Sec. 7B-31. Construction timetable.

(a) The franchisee shall construct or cause to be provided the necessary facilities to permit the reception of broadcast signals and the origination of programming within the city within twenty (20) months after application for a certificate of compliance has been filed with the FCC by the franchisee. The franchisee further shall complete construction of at least twenty percent (20%) of the cable distribution plant during the first twenty (20) months after application for a certificate of compliance has been filed with the FCC by the franchisee. Thereafter, the franchisee shall complete construction annually of at least twenty percent (20%) of the distribution plant and any remaining uncompleted portion of the cable television system necessary to fulfill the obligations of this franchise or of the FCC rules and regulations. A plan for location and construction, if any, of the head-end and lines shall be submitted to the city council within six (6) months after its acceptance of the franchise.

(b) Within five (5) years after application for a certificate of compliance has been filed with the FCC by the franchisee, the energized trunk, amplifiers and related equipment shall be capable of providing basic service to every dwelling unit within the franchise territory within sixty (60) days of an application for service. Thereafter, the city council may impose such further construction obligations as are necessary to bring basic service to any building within the city.

(c) Completion requirements. Failure on the part of a franchisee to commence and diligently pursue each of the foregoing requirements and complete each of the matters set forth herein shall be grounds for termination of its franchise under and pursuant to the terms of section 7B-21(b) of this chapter; provided, however, that the city council in its discretion may extend the time for the completion of construction and installation for additional periods in the event a franchisee, acting in good faith, experiences delays by reason of circumstances beyond its control. A franchisee's failure to comply with provisions of the construction plan approved by the city council shall be subject to the penalties pursuant to section 7B-64.

(d) The franchisee shall file an application for a certificate of compliance with the FCC within sixty (60) days of its acceptance of the franchise.

Sec. 7B-32. Interconnection.

A franchisee may interconnect the system with any or all other cable television systems in the area if otherwise lawful and provided such other system agrees to the interconnection. Interconnection of systems may be done by direct cable connection, microwave link, satellite or other appropriate method.

(a) Upon receiving the directive of the city to interconnect, the franchisee shall immediately initiate negotiations with the other affected cable television system or systems in order that costs may be shared equally for both construction and operation of the interconnection link.

(b) The city council may grant reasonable extensions of time to interconnect or rescind its request to interconnect upon petition by the franchisee to the city council. The city council shall grant the request if it finds that the franchisee has negotiated in good faith and the cost of interconnection would cause an unreasonable increase in subscriber rates.

(c) No interconnection shall take place without prior approval of the administrator. A franchisee in seeking approval for interconnection shall demonstrate that all signals to be interconnected will comply with FCC technical standards for all classes of signals and will result in a low level of distortion.

(d) The franchisee shall cooperate with any interconnection corporation, regional interconnection authority, state or federal regulatory agency which may be hereafter established for the purpose of regulating, facilitating, financing or otherwise providing for the interconnection of cable television systems beyond the boundaries of the city.

Article VII. Service Provisions.

Sec. 7B-33. Basic subscriber service.

(a) A franchisee shall provide all subscribers who request basic subscriber service with all television and radio broadcast signals either required or permitted to be carried pursuant to FCC rules and regulations, all local origination channels designated by the operator and at least one cablecasting access channel each for public, educational, governmental and lease users.

(b) A franchisee shall also make available a commonwealth access channel and comply with all requirements of the Virginia Public Telecommunications Council.

(c) The franchisee at its expense shall furnish upon request one outlet for each school, municipal office or agency which is within its service area and not more than one hundred fifty (150) feet from the franchisee's existing service facilities.

Sec. 7B-34. Additional services.

In order for the franchisee to satisfactorily perform the service requirements of this chapter, a franchisee shall make additional services including digital return available on reasonable requests from subscribers and programmers who are willing to pay the established rates for such services and upon approval by the FCC.

Sec. 7B-35. Radio signals.

A franchisee shall provide, as an additional service, broad band FM radio service. In the event reasonable demand exists, a franchisee shall provide AM signals.

Sec. 7B-36. Fixed studio facilities.

A franchisee shall make available at least one fixed studio facility within the city equipped for color productions for the production of programming.

Sec. 7B-37. Mobile production facility.

A franchisee shall purchase, equip (to the extent needed to perform color cablecasting) and staff one mobile production facility (van) for local origination channels. Said mobile production facility shall be made available to public, educational and governmental access users.

Sec. 7B-38. Programming.

A franchisee will be expected to originate programming within the city, providing one local originating channel for that purpose.

Article VIII. Design and Construction Standards.

Sec. 7B-39. Channel capacity.

The franchisee shall construct a cable television system that shall have not less than twenty-four (24) video channels or an equivalent amount of bandwidth capacity. Four of such channels shall be cable access channels, one each for public, educational, governmental and leased use.

Sec. 7B-40. Overhead and underground construction.

Construction of trunk, feeder and drop cable may be constructed overhead where poles now exist and electric or telephone lines or both are now overhead, but where no overhead poles exist all trunk, feeder and drop cable shall be constructed underground. Whenever and wherever electric lines and telephone lines are moved from overhead to underground placement, all cable television system cables shall be similarly moved and the cost of movement of its cable shall be solely the obligation of the franchisee.

Sec. 7B-41. Two-way capacity.

The system shall meet or exceed the FCC requirement for two-way cablecasting. The franchisee shall agree to develop Class IV uses as soon as a demand by a reasonable number of subscribers exists.

Sec. 7B-42. Emergency requirements.

The franchisee shall design and construct the system to provide for an audio override of all audio channels during emergencies and for purposes of civil defense. An emergency power source shall also be provided by the franchisee at the head-end of the cable television system.

Sec. 7B-43. System design.

The cable television system shall be installed in a manner which will allow each area, if served by a separate head-end, to distribute and originate programs to not only the area served by the head-end but to interconnect with other head-ends, if any, within the system in order to send or receive originated programming from or to any one or more areas served by other head-ends within the city.

Sec. 7B-44. Construction requirements and safety standards.

(a) Methods of construction, installation and maintenance of the city's cable television system shall comply with the National Electrical Safety Code, National Bureau of Standards Handbook 81 (part 2), National Bureau of Standards, United States Department of Commerce, November 1, 1961, to the extent that such code is consistent with local law affecting the construction, installation and maintenance of electric supply and communication lines. To the extent that such code is inconsistent with other provisions of this franchise or with local law, the latter shall govern.

(b) Any tower constructed for use in the city's cable television system shall comply with the standards contained in Structural Standards for Steel Antenna Towers and Antenna Supporting Structures, EIA Standards RS-222-A as published by the Engineering Department of the Electronic Industries Association, 2001 Eye Street, N.W., Washington, D.C. 20006.

(c) Installation and physical dimensions of any tower constructed for use in any cable television system shall comply with all appropriate Federal Aviation Agency regulations.

(d) Any antenna structure used in any cable television system shall comply with FCC rules and regulations.

Sec. 7B-45. Construction, supervision and alteration after construction.

(a) A franchisee shall construct, operate and maintain the cable television system subject to the supervision of all of the authorities of the city who have jurisdiction in such matters, and in strict compliance with all laws, ordinances, departmental rules and regulations affecting the system.

(b) The cable television system, and all parts thereof, shall be subject to the right of periodic inspection by the city.

(c) No construction, reconstruction or relocation of the cable television system, or any part thereof, within the streets shall be commenced until written permits have been obtained from the proper city officials. In any permit so issued, such officials may impose such conditions and regulations as a condition of the granting of the same as are necessary for the purpose of protecting any structures in the streets and for the proper restoration of such streets and structures, and for the protection of the public and the continuity of pedestrian and vehicular traffic.

(d) The city council may, from time to time, issue such reasonable rules and regulations concerning the construction, operation and maintenance of the cable television system as are consistent with the provisions of this chapter and the franchise issued pursuant to this chapter.

(e) The city council may require that any part or all of the cable television system should be improved or upgraded by the franchisee within a reasonable time thereafter (including, without limitation, the increasing of channel capacity, the furnishing of improved equipment, and the institution of two-way transmission; provided such improvement or upgrading of the system is found to be economically feasible. For the purpose of this subsection, a finding of economic feasibility shall mean a finding that the capital costs to the franchisee of such improvement or upgrading can reasonably be amortized over the then remaining life of the franchise.

Sec. 7B-46. Use of public property.

(a) Should the grades or lines of the streets which the franchisee is hereby authorized to use and occupy be changed at any time during the term of the franchise granted, the franchisee shall, if necessary, at its own cost and expense, relocate or change its system so as to conform with such new grades or lines.

(b) Any alteration to the water mains, sewerage or drainage system or to any city, state or other public structures in the streets required on account of the presence of the cable television system in the streets shall be made at the sole cost and expense of the franchisee. During any work of constructing, operating or maintaining of the system, the franchisee shall also, at its own cost and expense, protect any and all existing structures belonging to the city or any other person. All work performed by the franchisee pursuant to this section shall be done in the manner prescribed by the city or other officials having jurisdiction therein.

Sec. 7B-47. Interference with public projects.

Nothing in this ordinance shall be in preference or hindrance to the right of the city or any board, authority, commission or public service corporation to perform or carry on any public works or public improvements of any description, and should the system in any way interfere with the construction, maintenance or repair of such public works or public improvements, a franchisee shall, at its own cost and expense, protect or relocate its system, or part thereof, as reasonably directed by any city official, board, authority, commission or public service corporation.

Sec. 7B-48. Technical standards.

The franchisee shall comply with all requirements of the FCC or its successor governing technical standards.

Article X. Maintenance and Operation.

Sec. 7B-49. Books and records.

(a) The franchise shall maintain separate financial records governing its operation in the franchise area. The city shall have the right to inspect at any time during normal business hours, all books, records, maps, plans, income tax returns, financial statements and other like materials of the franchisee which relate to its operation in the city or expenses attributed to the cable television system by any parent corporation. Access to the aforementioned records shall not be denied by the franchisee on the basis that said records contain "proprietary" information. The refusal to provide information required herein to the city shall be grounds for revocation. All such information received by the city shall remain confidential insofar as permitted by the Virginia Freedom of Information Act.

(b) The franchisee shall maintain a file of records open to public inspection in accordance with applicable FCC rules and regulations.

Sec. 7B-50. Communication with regulatory agencies.

Copies of all petitions, applications, communications and reports

submitted by the franchisee or, if applicable, its parent corporation, to the FCC, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction over matters affecting cable communications operations authorized pursuant to this chapter shall be submitted to the city manager on or before the date the filing is submitted to the regulatory agency. Public access to such reports received by the city manager shall not be denied.

Sec. 7B-51. Reports.

(a) Annual report--No later than September 30 of each year, the franchisee shall submit a written report to the city council, in a form directed by the city council, which shall include: (1) a summary of the previous year's activities in development of the cable television system including but not limited to services begun or dropped and subscribers gained or lost; (2) a summary of complaints, identifying both the number and nature of the complaints received and an explanation of their disposition; (3) a financial statement including a statement of income, a balance sheet and a statement of sources and application of funds; (4) a projected income statement, balance sheet, statement of sources and applications of funds and statement of construction plans for the next two (2) years; (5) a reconciliation between previously projected estimates and actual results; (6) a list of all stockholders who have acquired a three percent (3%) or more interest in the franchisee or, if applicable, its parent corporation, during the calendar year and a list of all officers and members of the board of directors of the franchisee and, if applicable, a full list of all officers of the parent corporation of a franchisee and (7) such other information as the city manager or the city council may direct. The annual report shall be presented at a regular public hearing meeting of the city council to be held no earlier than ten (10) days following submission of the report.

(b) Annual opinion survey report--The franchisee shall prepare and submit, by August 31 of each year, the results of an opinion survey which shall identify dissatisfaction among subscribers and unmet needs among subscribers and nonsubscribers. The opinion survey shall be conducted in conformance with such requirements, including supervision, as the city manager and the city council may devise.

(c) Annual plant survey report--The franchisee shall prepare and submit, by August 31 of each year, a complete survey of its plant and a full report thereon to the city council. The purpose of the report shall be to assure the city that the technical standards of the FCC are being maintained. This plant survey shall include appropriate electronic measurements and shall be conducted in conformance with such requirements, including supervision, as the city manager and city council may devise.

(d) General reports--The franchisee shall prepare and furnish to the city, at the times and in the form prescribed by the city manager and city council, such reports with respect to its operation, affairs, transactions or property, as may be reasonably necessary or appropriate to the performance of any of the rights, functions or duties of the city in connection with this chapter.

Sec. 7B-52. Service requirements.

(a) The franchisee shall comply with all technical standards and specifications established by the FCC throughout the entire period of its franchise.

(b) The franchisee shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest

time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum use of the system.

(c) The franchisee shall maintain its principal office in the city, which shall be open during all usual business hours, have a publicly listed telephone, and be so operated that complaints and requests for repairs or adjustments may be received and acted upon a 24-hour basis.

(d) The franchisee shall maintain a repair and troubleshooting force capable of responding to subscriber complaints or requests for service within twenty-four (24) hours after receipt of the complaint or request. No charge shall be made to the subscriber for this service.

Article XI. Economic Regulation.

Sec. 7B-53. Publication of rates, rules and regulations.

Every owner, operator or other person holding a franchise issued by the city council pursuant to this chapter shall publish and file with the administrator schedules of all rates and charges for all services offered to the subscribing public under such franchise, including all requirements which are required by this chapter. Such schedule or schedules shall plainly state the cost of each particular service or combination of services together with all rules, regulations and requirements affecting the installation, maintenance and provision of service or which otherwise affect the quality or cost of such service to a subscriber. Such schedules shall be printed, published and filed in the form and manner specified by the administrator. Such schedules shall be made available for public inspection during normal business hours, in an accessible and convenient place in the offices of the franchisee and copies of such schedules shall be available to the public upon payment of a reasonable fee equal to the cost of reproduction.

Sec. 7B-54. Departure from schedules prohibited.

No rate or charge shall be made or billed to a subscriber nor shall any service be provided unless the same and rules and regulations shall have been published and filed as provided in section 7B-53 of this chapter. Except as may be specified in its schedules, no franchisee shall charge, demand, collect or receive a greater, lesser or different compensation for any cable television service; nor shall such franchisee refund or remit, in any manner or by any device, any portion of such compensation or confer any special privilege or concession to any subscriber except as may be specified in its schedules.

Sec. 7B-55. Discrimination and preferences prohibited.

No franchisee shall, by special rate schedules, rebate, concession or by any other device or practice, charge, collect or receive from any subscriber, directly or indirectly, a greater or lesser sum than may be charged, collected or received from any other subscriber for a like and contemporaneous service under substantially similar circumstances and conditions and any such practice is unjust discrimination which is hereby prohibited and made unlawful; except that nothing in this section shall be construed to prohibit the establishment of special rates or charges for subscribers sixty-five (65) years of age or older or handicapped persons as defined in section 46.1-104.1(a) of the Code of Virginia.

Sec. 7B-56. Establishment of rates, rules and regulations.

Initial schedules of rates, rules, regulations and other matters

related thereto shall be filed, as provided in section 7B-53, with the administrator not less than sixty (60) days prior to the commencement of service by the franchisee. No change shall be made in such rates, rules or regulations, in accordance with section 7B-53, except upon not less than sixty (60) days' notice to the administrator, each subscriber and the general public except that the administrator may by general regulation, or in particular instances, permit changes to be made on lesser notice to correct errors, provide special or new service, or if special emergency conditions so require.

Sec. 7B-57. Acceptance of schedules.

Any schedule of rates, rules or regulations filed as aforesaid shall be examined by the administrator for compliance with the requirements of the franchise, this chapter, and as to specifications established by him governing form, and shall inform the franchisee within twenty (20) days of the effective date of such schedules that they are or are not in compliance with such requirements. If found not in compliance, such schedules shall be rejected and returned to the franchisee with a statement of the reasons for such rejection and the use of any schedules so rejected shall be null and void. Any rejection may be appealed to the city council as provided in section 7B-58.

Sec. 7B-58. Regulation of rates; complaints.

Whenever, upon complaint from any subscriber or other person, or upon direction from the city council, the administrator has reason to believe that any of the provisions of sections 7B-52 through 7B-57 or any provision or condition in the franchise is or will be violated, the administrator shall promptly undertake to investigate such complaint. Notice of such investigation shall be given to the franchisee and the administrator shall undertake to mediate or otherwise adjust the complaint informally. If the complaint cannot be adjusted informally, the administrator shall, upon notice to the franchisee and the complainant or the city council as the case may be, set the matter for public hearing. At such hearing, the administrator shall receive and consider such evidence and testimony as he may regard as relevant and, for this purpose, the franchisee shall furnish all books, papers or other records requested by him and make employees or agents available for testimony at such hearing. In the conduct of such hearing and all matters related thereto, the administrator shall be guided by the practice and procedure of the State Corporation Commission insofar as practicable. Hearings may be ex parte if after reasonable notice the franchisee does not appear. Not more than sixty (60) days following such hearing, the administrator shall issue a decision, order or requirement on the complaint which shall be final and binding on both parties within twenty (20) days of its being served unless within such twenty (20) days an appeal is taken to the city council. If such an appeal is taken the order of the administrator shall be stayed until council issues a decision.

Sec. 7B-59. Regulation of rate level.

On or after one year of continuous cable television service by a franchisee, the city council, on its own motion or recommendation of the administrator, may direct the administrator to investigate the rates and charges of the franchisee to determine whether such rates and charges are excessive. In making such investigations, the procedures and requirements set forth in section 7B-58 shall be followed. In determining whether such rates or charges, in part or

in whole, are excessive, the administrator shall consider, insofar as appropriate, any relevant factors including, but not limited to, the annual costs of operations, the cost of capital devoted to public use, the rates in existence in other parts of the nation for similar service rendered by cable television systems in similar markets and the appropriate rate of return on investment prudently made. In making such a determination, due consideration shall be made for (1) the use of public rights-of-way by the franchise and (2) the economic risks associated with cable television operations, including the presence or absence of competition in the marketing and viewing of television programming. If the administrator shall determine that such rates are excessive, he shall order and the franchisee shall be required to alter such rates in such manner and to such extent as the administrator shall specify. In the event an irreconcilable controversy remains after exhaustion of the remedies provided for in section 7B-58 of this chapter, the administrator's determination shall be submitted to binding arbitration as provided by sections 7B-80 through 7B-85 of this chapter.

Article XII. General Financial and Insurance Provisions.

Sec. 7B-60. Payment to the city.

(a) As compensation for any franchise granted pursuant to this chapter and in consideration of permission to use the streets and public ways of the city for the construction, operation, maintenance and reconstruction of a system within the city, the franchisee shall pay to the city an amount equal to three percent (3%) of the franchisee's adjusted gross annual revenues from all sources attributable to the operations of the franchisee within the city.

(b) It is the intent of the city to utilize these funds, as necessary, to defray the costs of local regulation of the franchisee, to support the development of the public access channels and generally to encourage development of the system.

(c) Payments due the city under this provision shall be computed quarterly, for the preceding quarter, as of March 31, June 30, September 30 and December 31. Each quarterly payment shall be due and payable no later than thirty (30) days after the applicable computation date. The amount to be paid shall be computed by using the average number of subscribers and the rate in effect for the greatest number of days in the period. Each payment shall be accompanied by a report showing the basis for the computation and such other relevant facts as may be required by the city manager.

(d) No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the city may have for further or additional sums payable to the city. All amounts paid shall be subject to audit and recomputation by the city. In the event that recomputation results in additional revenue to be paid to the city, such amount shall be subject to a ten percent (10%) interest charge.

(e) Nothing in the section shall be interpreted as relieving a franchisee of local taxes or license fees. This reservation includes but is not limited to any applicable amusement taxes.

Sec. 7B-61. Application and certification fees.

Each application shall be accompanied by a nonrefundable filing fee in the amount of five thousand dollars (\$5,000.00) which shall be payable to the City of Alexandria, Virginia. All such fees shall be credited to the general fund of the city for the purpose of investigation of franchise applications and enforcement of the provisions of this chapter.

A franchisee shall pay all expenses incurred by the city in connection with the submission, processing and defense of an application for a certificate of compliance with the FCC by the franchisee.

Sec. 7B-62. Liability and indemnification.

(a) Franchisees shall pay and upon acceptance of a franchise specifically agree to pay all damages and penalties which the city may legally be required to pay as a result of granting the franchise. These damages or penalties shall include, but shall not be limited to, damages arising out of the installation, operation or maintenance of the system authorized by the franchise, whether or not any act or omission complained of is authorized, allowed or prohibited by this chapter.

(b) Franchisees shall provide and pay for any legal defense of the city with regard to all actions mentioned in subsection (a) above.

(c) Franchisees shall maintain, and upon acceptance of a franchise specifically agree to maintain, throughout the term of its franchise, liability insurance insuring the city and the franchisee with regard to all damages and penalties mentioned in subsection (a) above in the minimum amounts of:

(1) \$300,000.00 for property damage resulting from any one accident.

(2) \$150,000.00 for all other types of liability.

(d) Franchisees shall maintain, and upon acceptance of a franchise specifically agree to maintain, throughout the term of its franchise, a faithful performance bond running to the city, executed by a surety company authorized to do business as surety in the State of Virginia, in the penal sum of \$100,000.00 conditioned that the franchisee shall well and truly observe, fulfill and perform each term and condition of this chapter or its franchise, and that in case of any breach of condition of the bond, the amount thereof shall be recoverable from the principal and sureties thereof by the city for all damages and penalties proximately resulting from the failure of the franchisee to well and faithfully observe and perform any provision of this chapter and its franchise.

(e) Within thirty (30) days after the acceptance of the franchise, the franchisee shall furnish proof to the city that a satisfactory insurance policy and performance bond have been obtained. The insurance policy and performance bond shall be approved by the city attorney upon a finding that the requirements of subsection (d) of this section have been met and such insurance policy and performance bond, along with written evidence of payment of required premiums, shall be filed and maintained with the administrator.

(f) Within thirty (30) days after the acceptance of its franchise, the franchisee shall deposit to the account of the city's department of finance, in an interest bearing escrow account in a bank in the city, and maintain on deposit until construction of the cable television system is completed to the extent that basic service may be provided to every city dwelling unit within sixty (60) days of application for service as provided in section 7B-31(b) of this chapter, a security fund in the sum of twenty thousand dollars (\$20,000.00) in cash as security for the faithful performance by it of all the provisions of this chapter and of its franchise relating to construction and compliance with all orders, permits and directions of any agency of the city having jurisdiction over its acts or defaults

relating to construction and the payment by a franchisee of any claims, liens, penalties or taxes due the city which arise by reason of the construction of the system. Within thirty (30) days after notice to it that any amount has been withdrawn from the security fund deposited as provided herein, the franchisee shall deposit in such account a sum of money sufficient to restore such security fund to the original amount of twenty thousand dollars (\$20,000.00).

If a franchisee fails to pay the city any compensation within the time fixed herein; or, fails, after ten (10) days' notice to pay to the city any taxes due and unpaid; or fails to repay to the city within such ten (10) days, any damages, penalties, costs or expenses which the city shall be compelled to pay by reason of any act or default of a franchisee in connection with construction, or, fails, after three (3) days' notice by the administrator of such failure to comply with any provision of this chapter which the administrator reasonably determines can be remedied by an expenditure of the security fund, the director of finance (director) may immediately withdraw the amount thereof, with interest and any penalties, from the security fund. Upon such withdrawal, the director shall notify the franchisee of the amount and date thereof. The security fund, performance bond and insurance policy may be drawn upon in that order of priority to pay the city for any compensation, damages, penalties, costs or expenses owing under this chapter. In the event the security fund is insufficient to provide the amount due, the insurance policy and the performance bond may be drawn upon by application of the director for any amount due the city above the amount in the security fund.

(g) The cash deposit, including any interest that may have accrued, and the performance bond, posted pursuant to this section, shall become the property of the city in the event that a franchise is cancelled by reason of the default of the franchisee. Upon application to the city council, the franchisee shall be entitled to the return of the performance bond at the expiration of the franchise provided there is then no outstanding default on the part of the franchisee. The cash deposit security fund, including any interest that may have accrued, shall be retained by the city and returned to the franchisee at the completion of construction as provided in section 7B-31(b) of this chapter provided there is then no outstanding default on the part of the franchisee.

(h) The rights reserved to the city with respect to the security fund are in addition to all other rights of the city, whether reserved by this chapter or authorized by law, and no action, proceeding or exercise of a right with respect to such security fund shall affect any other right the city may have.

Sec. 7B-63. Cost of consultant.

When necessary to aid in the analysis of matters relating to the setting of rates, technical standards or market surveys in the city, the city shall be entitled to employ the services of a consultant to assist and supplement the office of the administrator. All reasonable fees of the consultant incurred by the city in this regard shall be shared equally by the franchisee and the city, regardless of the nature or outcome of any specific matter under consideration. The terms of this section shall not apply to any research by the city in connection with the right of the city to purchase the system.

Sec. 7B-64. Penalties.

For violation of provisions of this chapter or a franchise granted pursuant to this chapter, penalties shall be chargeable to the security fund as follows:

- (a) For failure to submit plans indicating expected dates of installation of various parts of the system \$100 per day
- (b) For failure to commence operations in accordance with requirements herein \$200 per day
- (c) For failure to complete construction and installation of system as required \$500 per day
- (d) For failure to supply data requested by city in connection with installation, construction, customers, finances or financial reports or rate review \$ 50 per day
- (e) For persistent failure to comply with reasonable recommendations of the city relating to rates or services and/or interconnections, and such other reasonable requests or recommendations as may be made pursuant to authority granted by this ordinance \$ 50 per day
- (f) For failure to restore the cash deposit as required within the specified thirty (30) days, the entire cash deposit remaining (if any) and the full amount of the performance bond shall be forfeited.

In cases where the franchisee disagrees as to whether the requests which have been disregarded are "reasonable," appeal may be made to the city council.

Article XIII. Administrator.

Sec. 7B-65. Cable television administrator.

The position of cable television administrator, under the city manager, is hereby established. Such administrator shall be appointed and removed by the city manager. The city manager may designate such additional staff as needed.

Sec. 7B-66. Functions of administrator.

Day-to-day regulation of the franchise is assigned to the cable television administrator. The administrator's powers and responsibilities shall include, but not be limited to, the following functions:

- (a) To assist in the preparation of the invitation to bid for the franchise; to establish criteria for review and ranking of franchise applications; to review and screen applications for franchises and to make selection recommendations through the city manager to council.
- (b) To monitor the franchisee's timely performance in making application for and obtaining all certificates, permits and agreements as provided for in this chapter.
- (c) To monitor the franchisee's performance in meeting the construction timetable as provided for in this chapter
- (d) To advise and make recommendations through the city manager to the city council on matters which may constitute grounds for revocation of a franchise in accordance with this chapter.
- (e) To advise and make recommendations through the city manager to the city council on the regulation of rates in accordance with this chapter.

(f) To cooperate with other systems, franchisees and governmental units in the development of and in the supervision of the interconnection of systems.

(g) To review all franchise records as required by this chapter, as well as all franchise reports filed with the FCC, and, in the administrator's discretion, require the preparation and filing of information in addition to that required herein.

(h) To monitor performance under any other terms of the franchise agreement and this chapter and to make recommendations through the city manager to council to ensure such compliance.

(i) To promote, develop and coordinate the use of the public channels in conjunction with the Alexandria Cable Television Advisory Commission and the Alexandria Cable Television Committee of Education Interests.

(j) To make an annual report to the council including: an account of franchise fees received and distributed, the total number of hours of utilization of public channels with hourly subtotals for various programming categories, and a review of any plans submitted during the year by the franchisee for development of new services.

(k) To conduct evaluations of the systems at least every three (3) years, with the franchisee, and pursuant thereto, make recommendations through the city manager to the council for amendments to this chapter or to the franchise agreement.

(l) To receive, investigate and enforce complaints against the franchisee by any person or upon direction of council in accordance with section 7B-58 of this chapter.

(m) To provide staff assistance and information to the Alexandria Cable Television Advisory Commission and to the Alexandria Cable Television Committee of Education Interests.

Sec. 7B-67. Expenditures.

The administrator may make expenditures to carry out the duties assigned in this chapter, subject to the availability of funds.

Article XIV. Alexandria Cable Television Advisory Commission.

Sec. 7B-68. Intent.

There shall be established a commission to advise the city about cable television and to promote and develop access to the system which shall be known as the Alexandria Cable Television Advisory Commission (referred to as the commission).

Sec. 7B-69. Members and term.

The city council shall appoint five (5) members to the commission; provided, however, that one (1) member of the commission shall be the chairman of the Alexandria Cable Television Committee of Education Interests and that the other four (4) members be residents of the City of Alexandria. Each member shall serve a three (3) year term. Initial terms shall be for one (1), two (2) and three (3) years to be determined by lot as follows: one (1) member shall serve for one (1) year, two (2) members shall serve for two (2) years each and two (2) members shall serve for three (3) years each. Any interim vacancy

shall be filled by the city council for the unexpired portion of the term. No employee or person with any ownership interest in a cable television franchise granted pursuant to this chapter shall be eligible for membership on the commission.

Sec. 7B-70. Officers; quorum; meetings; action by majority.

The council shall designate one (1) of the members of the commission as chairperson for an initial term not to exceed one (1) year. At its initial meeting, the commission shall select, by majority vote, one (1) of its members to serve as secretary. Thereafter, successor officers shall be chosen by majority vote of the members for terms of one (1) year. A quorum of three (3) members present shall be required before the commission may take official action. A member present but not voting shall be considered in counting a quorum. The commission shall meet at least six (6) times per year. Additional meetings may be held when necessary and called by the chairperson or any two (2) members with forty-eight (48) hours notice to all members. All meetings shall be open to the public in accordance with state law. All members shall be entitled to vote and decisions of the commission shall be determined by majority vote of the members present. Members shall serve without compensation, but may receive reimbursement for expenses subject to the availability of funds.

Sec. 7B-71. Functions of the commission.

The commission shall have the following functions:

(a) Make recommendations of general policy to the franchisee relating to the service provided subscribers and the operation and use of public channels, with a view to maximizing the diversity of programs and services to subscribers.

(b) Encourage the use of public channels among the widest range of institutions, groups and individuals within the city. This endeavor shall be conducted with a view toward establishing different categories of uses, defined as follows:

(1) Local educational uses, including libraries, public schools and other educational institutions and projects.

(2) Public access for local programming under public control.

(3) Public agency access (including police, fire, burglar alarms and public announcements).

(4) Off-the-air network and independent entertainment programs.

(5) Off-the-air educational programs.

(6) Availability of channel time for lease for pay-cable.

(7) Availability of channel time for lease for business use, including telemetry of information.

(8) Information retrieval and professional communication.

(c) Make an annual report to the city council by the categories in (b) above regarding the promotion of, use of and future plans for public channels. Such annual report shall also include a review of the activities of the commission together with an evaluation of such activities and recommendations for improvement of the cable television system in the city.

Article XV. State Regulation.

Sec. 7B-72. Virginia Public Telecommunications Council.

A franchisee shall comply with all requirements of the Virginia Public Telecommunications Council (referred to as Telecommunications Council) not in conflict with FCC regulations, particularly those requirements established in the Master State Plan for Public Telecommunications as adopted, and amended from time to time, by the Telecommunications Council.

Sec. 7B-73. Committee of education interests.

(a) In accordance with the requirements of the Virginia Master State Plan for Public Telecommunications, there is hereby created and established a committee to be known as the Alexandria Cable Television Committee of Education Interests (referred to as committee).

(b) The purpose of the committee shall be to review the programming, time allocations and other aspects of the operation of the education access channel and to report any findings and recommendations to city council and the franchisee on a regular basis. The committee shall have no power of censorship over such channel.

(c) The committee shall consist of seven members, one of which members shall be designated by the Northern Virginia Educational Telecommunications Association or its successor and six (6) of which members shall be appointed by the city council, one of whom shall be drawn from each of the following categories: Alexandria City Public Schools, Virginia State Department of Community Colleges or its successor, Virginia State Council for Higher Education or its successor, an Alexandria nonsectarian private school and the city at large. It shall not be necessary for any member except for the member chosen from the city at large to be a resident of the city. Three (3) of the members, as determined by lot among the appointees, shall serve an initial term of one (1) year. Otherwise, the term of service shall be two (2) years. Any vacancy shall be filled by the council for the unexpired portion of a term. Provided, however, that members shall, wherever possible, be citizens of the city.

The council shall designate one (1) of the members of the committee as chairman. Successor chairmen shall be chosen by a majority vote of all the members of the committee. The names of all appointees shall be submitted by the city clerk to the Telecommunications Council or its successor for review.

(d) All members of the committee shall be entitled to vote and the decisions of the committee shall be determined by a majority vote of the members present. A quorum of the members present is required before the committee may take official action. Any member may designate an authorized representative to participate in all respects as a member of the committee in his place. All meetings of the committee shall be open to the public. Notice of any meeting shall be given to the Telecommunications Council or its successor and to the general public. Notice of any meeting shall be given to the Telecommunications Council or its successor and to the general public at least ten (10) days prior to such meeting.

(e) The Telecommunications Council or its successor may designate one or more official representatives to attend any meeting of the committee for the purpose of making presentations relating to public telecommunications and participating in the committee's discussions. The committee shall cause minutes of its proceedings to be kept and shall provide a copy of the minutes of each meeting to the Telecommunications Council or its successor. Any bylaws established by the

committee or its successor for its proceedings shall be approved by the Telecommunications Council prior to final adoption by the committee.

Article XVI. Rights of Individuals Protected.

Sec. 7B-74. Discriminatory employment practices prohibited.

Franchisees shall not deny service, deny access or otherwise discriminate against subscribers, channel users or general citizens on the basis of race, color, religion, national origin or sex. Franchisees shall strictly adhere to the equal employment opportunity requirements of the FCC. Franchisees shall comply at all times with all other applicable federal, state and city laws, and all executive and administrative orders relating to nondiscrimination.

Sec. 7B-75. Restrictions on Cable Monitoring.

Except as otherwise provided by this section, the franchisee shall not monitor, or arrange for the monitoring, or permit any person, expressly or impliedly through their knowledge, to monitor any subscriber outlet or receiver for any purpose whatsoever, without the specific written authorization of the subscriber being monitored, and other than to the extent so authorized by such subscriber. Any information gathered by such monitoring shall not be sold, given or otherwise transferred to any person not in the employ of the franchisee or the person supplying the service involved. Provided, that the franchisee may conduct such monitoring as may reasonably be necessary for (1) the maintenance and operation of the cable television system; and (2) the collection of data for the purpose of ascertaining viewer response to programming. Any data collected for the purpose of ascertaining viewer response to programming may be disseminated provided such data does not in any way reveal or indicate any information as to individual subscribers.

Sec. 7B-76. Privacy and other human rights.

The franchisee and the city shall maintain constant vigilance with regard to possible abuses of the right of privacy or other human rights of any subscriber, programmer or general citizen resulting from any device or signal associated with the system.

Sec. 7B-77. Permission of property owner required.

No cable, line, wire, amplifier, converter or other piece of equipment owned by a franchisee shall be installed by a franchisee without first securing the permission of the owner of any property or easement involved. If such permission is later revoked, whether by the original or a subsequent owner, the franchisee shall remove forthwith any of its equipment which is both visible and movable and promptly restore the property to its original condition at the franchisee's expense.

Sec. 7B-78. Sale of subscriber lists prohibited.

A franchisee shall not sell, or otherwise make available, lists of the names and addresses of its subscribers, without permission of the subscribers.

Sec. 7B-79. Indemnification.

The franchisee shall, as a condition of acceptance of the franchise, agree and bind itself to remise, release and discharge the city from any and all claims or causes of action arising out of or as a result of any acts done by it.

Article XVII. Resolution of Disputes.

Sec. 7B-81. Intent.

It is the intent of the city to provide for the orderly resolution of any controversy or dispute between the franchisee and the city arising out of the enforcement or interpretation of any provision of the franchise or any provision of this chapter and any rule, regulation or procedure relating to cable communications matters. Fact finding and mediation shall be the means of resolving the great majority of such controversies or disputes. Only those matters specifically designated as arbitrable may be submitted to that process for binding resolution. None of these methods, however, shall be the first resort of the parties, but shall be undertaken only after reasonable time and full effort to reach agreement by negotiation.

Sec. 7B-82. Fact finding.

Any controversy or dispute, upon the election of either the franchisee or the city, shall be submitted to an expert individual acceptable to both parties for an investigation of the facts and a report thereof. Such fact finding shall be for the purpose of developing better information for the use of both parties and shall not be binding on either party. All fees or other expenses resulting from such fact finding shall be shared equally by the franchisee and the city.

Sec. 7B-83. Mediation.

Any controversy or dispute under this article, upon the election of either the franchisee or the city, shall be submitted to an expert individual, acceptable to both the franchisee and the city, for the purpose of facilitating discussion and receiving new perspectives on the issues and new proposals for compromise. Such mediation shall not be binding on either party. All fees or other expenses resulting from such mediation shall be equally borne by both the franchisee and the city.

Sec. 7B-84. Arbitration.

Only those matters which are expressly arbitrable under the provisions of this chapter may be submitted for arbitration. Arbitrable matters may be submitted to a single expert individual, if both parties agree to do so. Otherwise, arbitrable matters shall be submitted to a three-member expert panel. Arbitration shall be held under the rules and procedures of the American Arbitration Association. Arbitration shall be binding on both parties. Arbitrated matters shall be held to have been adjudicated and settled, and not open, either directly or indirectly, for review, pursuant to the rules and procedures of the American Arbitration Association. All fees or other expenses resulting from such arbitration shall be paid by the franchisee and the city as hereinafter provided.

Sec. 7B-85. Selection procedures.

(a) In the case of fact finding or mediation; both parties shall present a maximum total of three (3) names each for possible service as experts. If there is no agreement on any of the names, the American Arbitration Association shall select a person to fulfill the function as expert.

(b) In the case of arbitration, both parties shall agree upon the number of persons to serve on the arbitration panel. Such number shall be either one or three. If a single-member panel is agreed upon, both parties shall jointly name the person, utilizing the procedures established for fact finding and mediation. If a three-member panel is agreed upon, the membership shall be one person named by the franchisee, one person named by the city and a third person named by both the franchisee and the city acting jointly. Said third person shall serve as the presiding officer of the panel. If there is no agreement on the single arbitrator or the presiding officer of a three-member panel, the procedures established for fact finding and mediation shall be followed.

Sec. 7B-86. Fees and expenses.

The fees of single experts and arbitrators shall be equally borne by the franchisee and the city. The fee of an arbitrator who is appointed directly by one of the parties shall be borne by that party. The fee of the presiding officer of an arbitration panel shall be equally borne by the franchisee and the city. The expenses of fact finding and mediation shall be equally borne by the franchisee and the city. The expenses of arbitration shall be borne as determined by the arbitration panel in its award or finding, but in no event shall the city be obligated for more than one-half (1/2) the expenses.

Article XVIII. Miscellaneous Provisions.

Sec. 7B-87. Compliance with laws.

The franchisee shall comply with all federal and Commonwealth of Virginia laws, as well as city ordinances, resolutions, rules and regulations heretofore or hereafter adopted or established during the entire term of its franchise.

Sec. 7B-88. Captions.

The captions to sections throughout this chapter are intended solely to facilitate reading and reference to the sections and provisions of this chapter. Such captions shall not affect the meaning or interpretation of this chapter.

Sec. 7B-89. No recourse against the city.

The franchisee shall have no recourse whatsoever against the city or its officials, boards, commissions, agents or employees for any loss, costs, expense or damage arising out of any provision or requirement of this chapter or because of the enforcement of this chapter, unless the same shall be caused by criminal acts or by willful or gross negligence.

Sec. 7B-90. Rights and remedies.

(a) The rights and remedies reserved to the parties by this chapter are cumulative and shall be in addition to and not in derogation of any other rights or remedies which the parties may have with respect to the subject matter of this chapter.

(b) The city hereby reserves to itself the right to intervene in any suit, action or proceeding involving any provision of this chapter.

(c) Specific mention of the materiality of any of the provisions herein is not intended to be exclusive of any others for the purpose of determining whether any failure of compliance hereunder is material and substantial.

(d) The franchisee shall not be relieved of its obligation to comply with any of the provisions of this chapter by reason of any failure of the city to enforce prompt compliance. Nor shall any inaction by the city be deemed to waive a provision voiding any provision of this chapter.

Sec. 7B-91. Day-to-day enforcement.

The day-to-day enforcement of the provisions of this chapter and any franchise granted pursuant to this chapter shall be the responsibility of the administrator.

Sec. 7B-92. Powers of court to enforce obedience to franchises.

Nothing in this chapter shall be construed to prevent any party from enforcing compliance with the terms and contracts as contained in any franchise pursuant to section 15.1-315 of the Code of Virginia (1950), as amended.

Sec. 7B-93. Subsequent action by state or federal agencies.

Should the Commonwealth of Virginia, the FCC or any other agency of the government subsequently require the franchisee to deliver any signals in addition to those required by this chapter or to perform or cease to perform any act which is inconsistent with any provision of this chapter, the franchisee shall so notify the city.

Sec. 7B-94. Amendments to this chapter.

In order to fulfill the public interest goals of this chapter, to provide additional communications service to the city through the use of cable television and thereby to ensure the benefits which will result from such service, the city shall specifically reserve the right in any franchise granted to amend this chapter to effectuate the public interest in the operation of a cable television system. The city council shall from time to time, after appropriate review, enact provisions governing the technical performance and service delivery of the system.

Sec. 7B-95. Incorporation by reference.

Any franchise granted pursuant to this chapter shall include a provision which shall incorporate by reference this chapter into such franchise as fully as if copied therein verbatim.

Article XIX. Franchise Grant.

Sec. 7B-96. Grant of franchise; Bids, notices, publications, acceptance.

The general law governing the granting of the franchise to use public property, found in sections 15.1-307 through 316, Code of Virginia (1950), as amended, is hereby incorporated by reference into this chapter as fully as if copied herein verbatim. By way of illustration, however, city council shall grant a franchise pursuant to this chapter in the following manner.

Before granting a franchise to any applicant, city council shall enact an ordinance to provide for the granting of a franchise which ordinance shall contain an ordinance proposing to make the grant, and further shall advertise the ordinance proposing to make the grant once a week for four (4) successive weeks in a newspaper

of general circulation published in the city. Such advertisement shall also invite bids for the franchise, which bids are to be in writing and delivered upon a day and hour named in the advertisement, in open session, to the presiding officer. The cost of advertising shall be paid by the city which, however, shall be reimbursed by the applicant to whom the grant is finally made.

The presiding officer shall read aloud the bids received and shall then inquire if any further bids are offered. If further bids are offered they shall be received, until no further bid is offered; but if not, the presiding officer shall declare the bidding closed. Council may refer the bids to the committee and make such other investigation as it may determine, after which council shall hold a public hearing on the bids after notice of such hearing is published in a newspaper of general circulation published in the city at least twenty (20) days prior to the date of the hearing. If council sees fit to grant a franchise, it shall enact the ordinance proposing to make the grant as advertised, without substantial variation, except as to the insertion of the name of the accepted bidder.

Within thirty (30) days after the granting of the franchise by the city, the franchisee shall present to the city a signed and notarized agreement accepting the provisions of the franchise. Within thirty (30) days after application for a certificate of compliance has been filed with the FCC by the franchisee, the franchisee shall execute a bond in favor of the city and shall make its security fund deposit pursuant to section 7B-62 of this chapter.

Section 2. That the title of and an informal memorandum explaining this ordinance shall be published in a newspaper of general circulation published in the city not later than five days following its introduction together with a notice containing the time and place for a public hearing. The city clerk shall have the full text of this ordinance printed in sufficient numbers to supply copies to meet request. The city clerk shall note the date of introduction and first reading, the date of publication, the date of the public hearing, and the date of the second reading and final passage in the minutes of the meeting. This ordinance shall become effective the date of its final passage.

FRANK E. MANN
Mayor

FINAL PASSAGE: 6/27/78